

DOCKET NO. 458-02-2203

TEXAS ALCOHOLIC BEVERAGE  
COMMISSION

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BEFORE THE STATE OFFICE

V.

OF

MICHELLE ANNETTE WIER SHELLEY  
D/B/A THE PATIO BAR  
SAN PATRICIO COUNTY, TEXAS  
(TABC CASE NO. 589424)

ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this disciplinary action against Michelle Annette Wier Shelley d/b/a The Patio Bar (Respondent), alleging that Respondent issued two checks for purchases of beer which were dishonored when presented for payment, in violation of the Texas Alcoholic Beverage Code. Petitioner requested that Respondent's permit be suspended for five days, or in lieu of suspension, that Respondent pay a civil penalty in the amount of \$750.00. The Administrative Law Judge (ALJ) recommends that Respondent's permit be suspended for three days and that Respondent be allowed to pay a civil penalty in the amount of \$450.00 in lieu of suspension.

**JURISDICTION, NOTICE, AND PROCEDURAL HISTORY**

No party challenged notice or jurisdiction. Therefore, those matters are addressed in the findings of fact and conclusions of law without further discussion here.

On June 27, 2002, a hearing convened before ALJ John H. Beeler and, by agreement, the parties appeared by telephone. Petitioner was represented at the hearing by Gayle Gordon, TABC Staff Attorney. Respondent represented herself. Evidence was presented and the record closed that same day.

**DISCUSSION**

Staff offered documents that established that Respondent committed the alleged violations. Respondent's husband, Robert Shelley, testified on Respondent's behalf and did not dispute the allegations. He explained that the first check was dishonored because of a banking error. The second dishonored check occurred while he and his wife were out of town and the person left in charge of the business did not have transportation to travel to the bank to deposit funds.

## ANALYSIS

The facts of this case are not in dispute. The only question to be decided is the appropriate penalty to be imposed. At the close to the hearing, Respondent asked for leniency. TEX. ALCO. BEV. CODE ANN. § 61.73(b) provides for a suspension for up to 60 days or cancellation of the permit. The Standard Penalty Chart found at 16 TEX. ADMIN. CODE § 37.60 recommends a warning or up to a three-day suspension for a first violation, a three-day suspension for a second violation, and a five-to-ten day suspension for a third violation.

The ALJ is of the opinion that a three-day suspension is warranted and that Respondent be allowed to pay a civil penalty in the amount of \$450.00 in lieu of suspension.

## FINDINGS OF FACT

1. Respondent, Michelle Annette Wier Shelley d/b/a The Patio Bar, holds Wine and Beer Retailer's Permit BG-450697 issued by the Texas Alcoholic Beverage Commission (TABC or Petitioner) for the premises located at 2709 W. Main, Ingleside, San Patricio County, Texas.
2. On April 10, 2002, Petitioner issued its notice of hearing to Respondent. This notice of hearing was received by Respondent.
3. The notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
4. A hearing was convened before John H. Beeler, Administrative Law Judge with the State Office of Administrative Hearings, on June 27, 2002. Petitioner appeared by telephone and was represented by Gayle Gordon, TABC Staff Attorney. Respondent appeared by telephone and represented herself.
5. On or about May, 2000, and November 1, 2000, Respondent issued checks for the purchases of beer which were dishonored when presented for payment.

## CONCLUSIONS OF LAW

1. TABC has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5, §§ 11.61(b)(2), 61.73(b), and 102.31.
2. SOAH has jurisdiction over all matters relating to conducting a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.

3. Based upon the above Findings of Fact, Petitioner issued its notice of hearing in compliance with 1 TEX. ADMIN. CODE §§ 155.27 and 155.55 and TEX. ALCO. BEV. CODE ANN. § 11.63.
4. Based upon the above Findings of Fact, Respondent violated TEX. ALCO. BEV. CODE ANN. § 61.73(b).
5. Based upon the above Conclusions of Law and TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2), 61.73(b), and 102.31, Respondent's permit should be suspended for a period of three days.
6. Based upon the above Conclusions of Law and TEX. ALCO. BEV. CODE ANN. § 11.64, Respondent should be permitted to pay a civil penalty of \$450 in lieu of suspension of the permit.

**SIGNED on this the 6<sup>th</sup> day of September, 2002.**

  
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**JOHN H. BEELER**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

**DOCKET NO. 589429**

IN RE MICHELLE ANNETTE WIER  
SHELLEY D/B/A THE PATIO BAR  
PERMIT NO. BG450697

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BEFORE THE  
  
TEXAS ALCOHOLIC  
  
BEVERAGE COMMISSION

SAN PATRICIO COUNTY, TEXAS  
(SOAH DOCKET NO. 458-02-2203)

**ORDER**

**CAME ON FOR CONSIDERATION** this 1st day of October, 2002, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge John H. Beeler. The hearing convened on June 27, 2002, and adjourned June 27, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on September 6, 2002. This Proposal For Decision was properly served on all parties who were given an opportunity to file Exceptions and Replies as part of the record herein. As of this date no exceptions have been filed.

The Assistant Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision, Transcripts, and Exhibits, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge, which are contained in the Proposal For Decision and incorporates those Findings of Fact and Conclusions of Law into this Order, as if such were fully set out and separately stated herein. All Proposed Findings of Fact and Conclusions of Law, submitted by any party, which are not specifically adopted herein are denied.

**IT IS THEREFORE ORDERED**, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Permit No. BG 450697 is herein **SUSPENDED**.

**IT IS FURTHER ORDERED** that unless the Respondent pays a civil penalty in the amount of \$450.00 on or before the 13th day of November, 2002, all rights and privileges under the above described permit will be **SUSPENDED** for a period of three (3) days, beginning at 12:01 A.M. on the 20th day of November, 2002.

This Order will become final and enforceable on **OCTOBER 22, 2002**, unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties by facsimile and by mail as indicated below.

**SIGNED** on this the 1st day of October, 2002.

On Behalf of the Administrator,



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Jeannene Fox, Acting Assistant Administrator  
Texas Alcoholic Beverage Commission

/vr

The Honorable John H. Beeler  
Administrative Law Judge  
State Office of Administrative Hearings  
**VIA FACSIMILE (512) 475-4994**

Michelle Annette Wier Shelley  
**RESPONDENT**  
d/b/a The Patio Bar  
P. O. Box 5  
Ingleside, Texas 78362-0005  
**CERTIFIED MAIL NO. 7001 2510 0000 7278 3614**

Gayle Gordon  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Regulatory Division - Compliance  
Corpus Christi District Office

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 589429

REGISTER NUMBER:

NAME: Michelle Annette Wier Shelley

TRADENAME: The Patio Bar

ADDRESS: P. O. Box 5, Ingleside, Texas 78362-0005

DATE DUE: November 13, 2002

PERMITS OR LICENSES: BG450697

AMOUNT OF PENALTY: \$450.00

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Amount remitted \$ \_\_\_\_\_ Date remitted \_\_\_\_\_

If you wish to pay a civil penalty rather than have your permits and licenses suspended, you may pay the amount assessed in the attached Order to the Texas Alcoholic Beverage Commission in Austin, Texas. **IF YOU DO NOT PAY THE CIVIL PENALTY ON OR BEFORE THE 13TH DAY OF NOVEMBER, 2002, YOU WILL LOSE THE OPPORTUNITY TO PAY IT, AND THE SUSPENSION SHALL BE IMPOSED ON THE DATE AND TIME STATED IN THE ORDER.**

When paying a civil penalty, please remit the total amount stated and sign your name below. **MAIL THIS FORM ALONG WITH YOUR PAYMENT TO:**

TEXAS ALCOHOLIC BEVERAGE COMMISSION  
P.O. Box 13127  
Austin, Texas 78711

**WE WILL ACCEPT ONLY U.S. POSTAL MONEY ORDERS, CERTIFIED CHECKS, OR CASHIER'S CHECKS. NO PERSONAL CHECKS. NO PARTIAL PAYMENTS.**

Your payment will not be accepted unless it is in proper form. Please make certain that the amount paid is the amount of the penalty assessed, that the U.S. Postal Money Order, Certified Check, or Cashier's Check is properly written, and that this form is attached to your payment.

\_\_\_\_\_  
Signature of Responsible Party

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
P.O. Box No.

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip Code

\_\_\_\_\_  
Area Code/Telephone No.

# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

September 6, 2002

FILED  
SEP 6

Mr. Rolando Garza, Administrator  
Texas Alcoholic Beverage Commission  
5806 Mesa, Suite 160  
Austin, Texas 78711

**HAND DELIVERY**

**RE: *Docket No. 458-02-2203; Texas Alcoholic Beverage Commission vs. Michelle Annette Wier Shelley d/b/a The Patio Bar San Patricio County, Texas (TABC Case No. 589429)***

Dear Mr. Garza:

Please find enclosed a Proposal for Decision that has been prepared for your consideration in the above referenced case. A copy of the Proposal for Decision is being sent to Gayle Gordon, Staff Attorney representing the Texas Alcoholic Beverage Commission, and to Michelle Annette Wier d/b/a The Patio Bar, Respondent. For reasons discussed in the Proposal for Decision, the Administrative Law Judge recommends that the Respondent's permit be suspended for three days and that Respondent be allowed to pay a civil penalty in the amount of \$450.00 in lieu of suspension.

Pursuant to TEX. GOV'T CODE ANN. §2001.062 (Vernon 2000), each party has the right to file exceptions to the Proposal for Decision and to present a brief with respect to the exceptions. If any party files exceptions or briefs, all other parties may file a reply. Exceptions and replies must be filed according to the time limits specified in TABC rules. A copy of any exceptions, briefs on exceptions, or reply must also be filed with the State Office of Administrative Hearings and served on the other party in this case.

Sincerely,

A handwritten signature in black ink, appearing to read "John H. Beeler".

John H. Beeler  
Administrative Law Judge

JHB/sb  
Enclosure

xc: Gayle Gordon, Staff Attorney, TABC, 5806 Mesa, Suite 160, Austin, Texas - **VIA HAND DELIVERY**  
Michelle Annette Wier d/b/a The Patio Bar, P.O. Box 5, Ingleside TX 78362-0005 - **VIA REGULAR MAIL**  
Rommel Corro, Docket Clerk, State Office of Administrative Hearings- **VIA HAND DELIVERY**